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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 002140

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SUBJECT: BOSNIA - KEEPING THE OHR HORSE IN THE BARN ON
CONSTITUTIONAL REFORM

REF: SARAJEVO 1980

Classified By: Ambassador Douglas L. McElhaney. Reasons 1.4(b) and (d)

¶1. (C) SUMMARY: The Ambassador met with OHR High Representative Schwartz-Schilling on September 13 at the HighRep's request to discuss constitutional reform, police reform, and the transition from his position as High Representative to the EU Special Representative. On constitutional reform, Schwartz-Schilling proposed moving quickly to phase II talks under EUSR lead, if the U.S. could not revive the March reform package after Bosnia's October elections. The Ambassador questioned Schwartz-Schilling's strategy and timeline, stressing as well that the U.S. expected to continue to play a leading role on constitutional reform. On police reform, Schwartz-Schilling urged the U.S. to convince Dodik to be more flexible, noting U.S. influence over Dodik was greater than the EU's and OHR's. The Ambassador responded that progress required the EU to set clear bottom lines and get tough on the issue. Finally, Schwartz-Schilling said that if he was to accomplish all that was required to keep Bosnia on the Euro-Atlantic path and was to stay on in Bosnia through 2008 as he intended, then he needed to retain Bonn Powers as EUSR. To the Embassy Schwartz-Schilling's proposals on constitutional reform looks like an attempt to secure a personal mandate prior to the February PIC that helps him secure his future beyond summer 2007 when OHR closes down. Regardless, we worry that Schwartz-Schilling's "discrete" activity on constitutional reform is increasingly indiscrete and that it risks undercutting the prospects for reviving the March package. It may be time for a frank exchange with Brussels on its policy to determine if the EU has indeed signed up to Schwartz Schilling's approach, as he implied, and if so to make its dangers clear. END SUMMARY

Constitutional Reform: "We Must Move Quickly to Phase II"

¶2. (C) Schwartz-Shilling opened the meeting by underscoring his interest in coordinating his approach on constitutional reform closely with the U.S. With that in mind, he outlined his plans for moving constitutional reform forward. He was, he said, prepared to support U.S. efforts to push the U.S.-brokered March package of constitutional amendments through the next parliament "as far as possible." He suggested that the parties should not be allowed to open up what was already agreed, but then added that slight

adjustments and/or technical fixes might be appropriate in some areas such as human rights. Regardless, Schwartz-Schilling said, a quick decision after elections about the prospects for the March package was critical. If it was impossible, for whatever reason, to secure its passage, then the international community should move directly to phase II talks under his lead, as EUSR. Schwartz-Schilling argued that this approach would ensure "clarity" on constitutional reform before the February 2007 PIC, which needed to make a decision about OHR's mandate.

13. (C) Schwartz-Schilling explained that he had already formed an "informal" advisory group, which included Jim O'Brien and Thomas Maekert (among others), to discuss phase II, and that the groups had met twice already (outside Bosnia). He told the Ambassador that the group would meet again in Vienna on September 25, and he asked whether a State Legal Office representative could participate. Schwartz-Schilling said his preliminary thinking, based on exchanges with the advisory group and OHR staff work, was that phase II needed to address two key issues: 1) entity voting within the State-level House of Representatives (something he said Haris Silajdzic had stressed in an exchange with him), and 2) clarification of the division of competencies between the State and entity levels of government. Language on competencies must not undermine the "EU clause" in the March package that provides the State the responsibility to negotiate with the EU and adopt and implement all measures necessary for implementation of GBiH commitments to the European Union, he added.

14. (C) The Ambassador responded that the U.S. intended to continue to exercise a leadership role on constitutional

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reform. This included making a post-election effort to revive the March package. He stressed that OHR/EUSR signals that it planned to launch phase II talks early would undermine the prospects for the March package. The Ambassador expressed concern that Schwartz-Schilling was already having conversations with Bosnian political leaders about phase II, as he recently admitted. The best thing to do right now was to keep quiet and avoid providing political leaders with an excuse to jettison the hard fought compromises contained in the March package. The Ambassador also questioned Schwartz-Schilling's assertion that the fate of the March agreement and a decision to move to phase II had to be decided shortly after the election, noting that Bosnia might not have a government until early 2007. The Ambassador stressed that the U.S. had not made any decisions about how to proceed with phase II talks. This included how to structure the talks and who should lead them. He wondered how U.S. interest in playing a leadership role could be squared with an EU-led process that took direction solely from Brussels. Finally, with regard to a State Legal representative, the Ambassador noted that it would be difficult for a USG employee to serve on an informal advisory group to the HighRep at this point.

Police Reform: "The U.S. Must Make Dodik Agree"

15. (C) Turning to police reform, Schwartz-Schilling underscored his intention to begin political talks immediately after the elections even while the Police Directorate continued its "professional assessment" regarding a new policing structure for Bosnia (reftel). He asserted that he had sent several of his advisors to Brussels to hammer out an agreed approach on police reform with the Council and the Commission. These exchanges convinced him that the EU was finally uniting around a common strategy on police reform, he said. It was important that the U.S. play a more active role on police reform, he added, arguing that the U.S. had to use its "special relationship with (Republika Srpska PM) Dodik" to persuade Dodik that there would be "serious consequences" unless he compromised on police reform.

¶6. (C) The Ambassador responded by noting that he regularly discussed police reform with Dodik, reminding him that the RS had failed to present serious proposals to the Police Directorate and that Dodik needed to engage constructively. That said, from the American perspective, the EU, and by extension OHR, had failed to come up with clear bottom-lines on police reform. Nor was it at all clear what sanction, beyond delaying the Stabilization and Association Agreement, the EU plans, if Dodik continues to block police reform. Dodik was hearing conflicting messages from Brussels and Sarajevo on this issue, the Ambassador noted, adding that the U.S. could not argue EU conditionality more forcefully than the Europeans themselves. Brussels and the HighRep needed to play a more active role on police reform and deliver clearer, and tougher, messages itself, he concluded.

From OHR to EUSR: "Give Me Bonn Powers"

¶7. (C) In a brief one-on-one exchange at the conclusion of the meeting, Schwartz-Schilling told the Ambassador that the summer 2007 transition from OHR to EUSR was crucial as a sign to Bosnians that Europe was their future. The Commission, he claimed, was concerned about whether Bosnia was ready to function without OHR supervision, adding that he believed this was possible provided the PIC found some way to maintain the Bonn Powers after summer 2007. These might be vested in him by allowing him to keep his OHR hat and a very small office of "OHR staff" funded by the EU. This arrangement would provide the U.S. with a greater voice in his day-to-day work than it might otherwise have under a purely EUSR operation, he stressed, adding that he was prepared to stay on until 2008 to see this work, particularly constitutional reform, through to the end. He closed by stressing that he was not asking for formal U.S. views on this proposal, but suggested it might be discussed on the margins of the October 19-20 PIC.

Comment

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¶8. (C) Schwartz-Schilling increasingly sees himself as leading, on behalf of the EU, Bosnia's constitutional reform process, and he appears prepared to take what we judge to be poorly calculated political risks to secure that leadership position. His willingness to raise constitutional reform with Bosnian politicians now, despite earlier promises that he would not do so, could derail U.S. efforts to revive constitutional reform post-election without achieving the grand bargain on more sweeping reforms Schwartz-Schilling claims he seeks. Throughout Schwartz Schilling implied that he had Brussels imprimatur for his constitutional reform strategy. Frankly, we doubt it, just as we doubt -- given Schwartz Schilling's plea to us on Dodik -- that Brussels has settled on a clear strategy for advancing police reform. We have heard rumors that Brussels is actually unhappy with Schwartz-Schilling's performance (for good reason), and his approach to constitutional reform and suggestion that he keep Bonn Powers may be part of a larger strategy to lock himself into job for him for the next two years. Regardless, we believe it would be worthwhile for senior U.S. officials to approach Solana and his staff to determine just what Brussels is thinking about the way ahead in Bosnia and to make clear that the March package of constitutional amendments should not be blithely risked in high stakes gamble to launch phase II talks before it is appropriate and without U.S. participation.

MCELHANEY